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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 790

CONCORDIA FIRE INSURANCE COMPANY,

APPELLANT,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT SUSTAINING JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO REVIEW UPON APPEAL THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS.

I.

Statutory Provision Sustaining Jurisdiction.

The final judgment of the Supreme Court of Illinois drew into question the validity of an Illinois statute (Section 30 of the Insurance Act of March 11, 1869, *as amended by the Act of May* 31, 1879, *now Cahill's*

Revised Statutes, 1931, *Chapter* 73, *Section* 159) *on the ground that it is repugnant to the Fourteenth Article of Amendment to the Constitution of the United States. The decision of the Supreme Court of Illinois was in favor of the validity of the statute. Therefore, the judgment of the Supreme Court of Illinois is reviewable under United States Code, Title* 28, *Section* 344 (*Judicial Code, Section* 237).

II.

Statute Involved.

The statute of Illinois which appellant contends has been so construed and applied as to render it unconstitutional is Section 30 *of the Act of* 1869, *styled "An Act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois", in force March* 11, 1869, *as amended by Act approved May* 31, 1879, *in force July* 1, 1879, *being Cahill's* 1931 *Revised Statutes, Chapter* 73, *Section* 159, *reading as follows:*

> "Every agent of any insurance company incorporated by the authority of any other state or government, shall return to the proper officer of the county, town or municipality in which the agency is established, in the month of May, annually, the amount of the net receipts of such agency for the preceding year, which shall be entered on the tax lists of the county, town and municipality, and subject to the same rate of taxation, for all purposes—state, county, town and municipal—that other personal property is subject to at the place where located; said tax

to be in lieu of all town and municipal licenses; and all laws and parts of laws inconsistent herewith are hereby repealed; *Provided,* that the provisions of this section shall not be construed to prohibit cities having an organized fire department from levying a tax, or license fee, not exceeding two per cent, in accordance with the provisions of their respective charters, on the gross receipts of such agency, to be applied exclusively to the support of the fire department of such city."

III.

Date of Judgment Sought to be Reviewed.

The judgment of the Supreme Court of Illinois sought to be reviewed herein was rendered on October 22nd, 1932. *A petition for rehearing was denied by the said court on December 9th,* 1932. *The application for appeal was presented February 4th,* 1933.

IV.

Statement of the Nature of the Case.

The Supreme Court of Illinois, on October 22, 1932, reversed the judgment of the Circuit Court of Cook County theretofore rendered in favor of the defendant, Concordia Fire Insurance Company, and entered judgment in favor of The People of the State of Illinois and against the defendant for $18,206.19. The defendant, within the time fixed by the rules of the Supreme Court of Illinois, filed its petition for rehearing, which was denied on December 9, 1932. The

opinion of the Supreme Court of Illinois is reported in 350 Illinois 365.

This suit was instituted in the Circuit Court of Cook County on November 8, 1928, and sought to recover the total sum of $30,140.61 as "omitted net receipts" taxes assessed by the Board of Review of Cook County in the year 1928, for the five preceding tax years, as follows:

For the year 1923	$5,853 40
For the year 1924	7,019 48
For the year 1925	5,059 58
For the year 1926	6,312 96
For the year 1927	5,895 19

In making the foregoing assessments for the years 1923 to 1926, the Board of Review purported to act under Section 276 of the Revenue Act of 1872, and Section 35 of the Revenue Act of 1898, empowering the Board of Review in subsequent years to assess property subject to tax in prior years and omitted from assessment in such prior years (as to the 1927 assessment, the Supreme Court ultimately held that the Board of Review was reviewing a current assessment and not making an original assessment of omitted property; this raises special questions as to the validity of the 1927 assessment by the Board of Review to which we shall refer hereafter). The source for the imposition of these assessments was Section 30 of the Act of 1869, entitled "An Act to Incorporate and to Govern Fire, Marine and Inland Navigation Insurance Companies Doing Business in the State of Illinois",

approved and in force March 11th and July 1st, 1869 (Laws of 1869, p. 209) (Cahill's 1931 Illinois Revised Statutes, Chap. 73, Sec. 159), already quoted *verbatim* herein, pages 2-3, and heretofore passed upon and held invalid in application in *Hanover Fire Insurance Company* v. *Harding*, 272 U. S. 494, 71 L. Ed. 372, which reversed the judgment of the Supreme Court of Illinois in *Hanover Fire Insurance Company* v. *Carr*, 317 Ill. 366. The Supreme Court of Illinois there held that Section 30 of the Insurance Act of 1869 exacted an excise, business or occupation tax, and that payment by the insurance company of the two per cent (2%) privilege tax upon gross premiums to the state under the privilege tax of 1919 (Laws of 1919, p. 628), in force July 1st, 1919, entitled "An Act in Relation to the Taxation of Non-Resident corporations, companies and associations for the Privilege of doing an Insurance Business in this State", did not prevent the imposition of a further excise tax for the continuing privilege of doing business in the state, and that, so considered the tax assessed was constitutional under both the state and federal constitutions. The opinion was by four of the Justices, and a dissenting opinion was filed by three Justices. A writ of error was prosecuted by the Hanover Fire Insurance Company; the judgment and decree of the Supreme Court of Illinois was reversed, and the tax assessed was held to be unconstitutional and void because of the discrimination against foreign stock fire insurance companies who were taxed upon one hundred per cent (100%) of their net receipts, after being admitted to do busi-

ness in the state, when competing domestic insurance companies were taxed upon only 30% of their property.

Upon the filing of the mandate in the Supreme Court of Illinois, that court, by a four to three decision, held, 327 Illinois 590, that Section 30 of the Insurance Act of 1869 did *not* create an excise, business or occupation tax, but on the contrary, imposed a property tax; that net receipts constituted personal property, and that under the Act of 1869 such net receipts should be scaled, debased and equalized in the same way as other personal property and the going tax rate applied to the debased and equalized figure for extension and calculation of taxes. The majority of the Court were further of the opinion that Section 30, although taken out of the Revenue Act of 1853 and retained in the Insurance Act for over fifty years without change, should be read and construed in connection with the Revenue Act, and that the provisions of the Revenue Act for valuation, assessment, extension and collection of taxes should be applied. The majority of the Court were further of the opinion that the Supreme Court of the United States had not declared Section 30 to be unconstitutional, and, in order to save a part of the tax in litigation, the Supreme Court of Illinois renounced its prior construction of Section 30 of the Insurance Act of 1869. No appeal was prosecuted by the Hanover Fire Insurance Company to review the validity of the construction given the mandate of the Supreme Court of the United States by the Supreme Court of Illinois.

The instant case was tried in the Circuit Court of Cook County under a stipulation that the defendant might introduce any evidence which would be admissible in equity under appropriate pleadings, in support of a bill to restrain the collection of the taxes, the plaintiff waiving any objection to the jurisdiction of the Court to entertain and give effect to any equitable cause of action or defense that the defendant might have; that the Court should enter such judgment or decree as might be appropriate to and in conformity with the evidence so that the defendant could have the same relief to which it would be entitled under a bill to restrain the collection of the taxes, and that the defendant might offer evidence proving *inter alia:*

(*a*) That the assessment of the taxes by the Board of Review was fraudulent and void.

(*b*) That the Board of Review had no power to assess net receipts taxes for the years in question, as omitted net receipts, or as omitted property taxes.

(*c*) That the omitted net receipts taxes assessed for the years in question were void and uncollectible.

(*d*) That Section 30 of the Act of 1869 was unconstitutional and void.

Upon the trial of the case below, it was established that after the handing down of its opinion the Supreme Court of Illinois in *Hanover Fire Insurance Company* v. *Harding,* 327 Ill. 590, the Board of Review of Cook County, at the instigation of one Herman B. Seeley, a tax ferret who was the beneficiary of a one-third interest in contingent fee contracts ob-

tained from taxing bodies of Cook County by two Chicago law firms (contingent upon collection of taxes alleged to be due from foreign stock fire insurance companies doing business in Cook County, Illinois), caused notices prepared by Seeley to be served on the foreign stock fire insurance companies operating in Cook County, requiring new returns to be filed for net receipts from 1869 to 1927, inclusive, and calling a hearing before the Board of Review for December 15, 1927. Such hearings were had beginning on that date and ending on December 28, 1927. After the conclusion of the hearings, *Seeley* prepared an estimate of the net receipts of each of the foreign stock fire insurance companies doing business in Cook County from the time that such companies began business, going back as far as 1869 in instances, to and including 1927. The Board of Review, without consideration of Seeley's figures, directed its chief clerk to take Seeley's figures as he had prepared them, and to spread them as an assessment of the net receipts in the year 1928 for all of the prior years, including 1923 to 1927, inclusive. This was done and the tax so assessed was placed on the books in the amounts shown in the declaration (*infra*, page 4) for each of the years in question.

As to the Board of Review's assessment for the years 1923 to 1926, inclusive, evidence was introduced upon the trial of the case establishing that the net receipts assessed had not been scaled, debased and equalized as required under the decision of the Supreme Court of Illinois in *Hanover Fire Insurance*

Company v. *Harding*, 327 Ill. 590. Since the Supreme Court of Illinois invalidated the Board of Review's assessment for these years on the ground that it had no jurisdiction to assess the net receipts in question as omitted property, the Board of Review's assessment for these years is no longer involved. As to the assessment for the year 1927, however, the Supreme Court held that the assessment by the Board of Review was of current and not of omitted receipts and sustained it. As to the failure to scale and debase defendant's net receipts as all other personal property in Cook County was scaled and debased in 1927, the members of the Board of Review of Cook County and the members of the Board of Assessors testified that sixty per cent of the full fair cash value of all other property was taken as the full value. Neither Seeley nor the Board of Review took sixty per cent of the net receipts calculated by Seeley as the full value of such net receipts for taxation for the year 1927. The failure of Seeley and the Board of Review to debase to sixty per cent the amount of net receipts calculated by them resulted in a tax upon 100% of the net receipts, instead of upon 60% for 1927.

In support of its contention that the tax assessed was unconstitutional, defendant established upon the trial of the case that defendant had been admitted to do business in Illinois long prior to 1923 and had within the state intangible property consisting of an agency plant of a value in excess of $5,000, which had been built up at large cost and expense; that during the years in question, various non-incorporated foreign

associations, various individuals, various so-called "Lloyds," and various domestic fire insurance companies were lawfully engaged in transacting the business of fire, marine and inland navigation insurance in Illinois, in competition with the defendant and all other foreign incorporated fire insurance companies during that period lawfully transacting the business of fire, marine and inland navigation insurance, and that such non-incorporated foreign associations, individuals, Lloyds, and domestic corporations, during those years, were not assessed for taxation upon their several net receipts, covering fire, marine and inland navigation insurance risks, assumed by them in Illinois, or upon any real or personal property other than net receipts like all other property owners and taxpayers, and that foreign stock fire insurance companies were assessed for taxation upon net receipts derived from such competitive business; that foreign casualty insurance companies also carried on such competitive business and were not taxed on their net receipts derived therefrom. It was also established that the loss ratio of the defendant for the years 1923 to 1927, was not less than forty-five per cent of its premiums received in Cook County, that is—out of every dollar of premium received by the company in Cook County, it was required to pay at least forty-five cents in losses.

The Circuit Court of Cook County, by specific findings, held that the assessments in question were fraudulently made, and that the taxes levied thereon were null and void, and found for the defendant. Upon appeal, the Supreme Court of Illinois reversed the judg-

ment of the Circuit Court of Cook County, and granted the plaintiff a measure of the relief sought (350 Ill. 365). The Court held, following *People* v. *Franklin National Insurance Company*, 343 Ill. 336, that Section 30 of the Act of 1869 was not repugnant to the Fourteenth Article of Amendment to the Constitution of the United States. As to the assessment for the years 1923 to 1926, inclusive, the Court rejected the Seeley assessment on the ground that the Board of Review was without jurisdiction to make an omitted property assessment, and entered judgment for the amount of the tax due, calculated on the basis of scaling and debasing the returns made by the companies. For the year 1927, the court sustained the Seeley assessment, and rejected the contention that the assessment was illegal and void and a deprivation of the property of the defendant without due process of law, by reason of Seeley's agency in assessing such tax and his contingent interest in the amount of the tax assessed, and the further contention that the Board of Review failed to debase the value of defendant's net receipts to sixty per cent as all other property was debased.

The court also held that foreign stock fire insurance companies must pay the net receipts tax on all classes of business, that is, not only on fire, marine and inland navigation risks (specifically mentioned in Section 30), but also on tornado, theft, explosion, property damage to automobiles and other property by collision, crop insurance, and other classes of insurance against like hazards. As to insurance on the hazards other than fire, marine and inland navigation, casualty companies

compete and are not required to pay taxes on their net receipts under the decision of the Supreme Court of Illinois in *Fidelity & Casualty Company* v. *Board of Review*, 264 Ill. 11.

The Supreme Court held under the evidence that the defendant should pay taxes in the following amounts for the years in question:

Net receipts tax for the year ending April 30, 1923	$2,017.00
Net receipts tax for the year ending April 30, 1924	3,528.00
Net receipts tax for the year ending April 30, 1925	4,072.00
Net receipts tax for the year ending April 30, 1926	2,694.00
Net receipts tax for the year ending April 30, 1927	5,895.19

Pursuant to its view of the evidence as to the proper tax to be assessed for each of the years, the court entered its judgment in the aggregate amount of $18,206.19 (as we have already indicated, certain questions arise on the record with reference to the 1927 assessment and tax, imposed under the decision of the court, that do not inhere as to the other years). From the judgment of the Supreme Court of Illinois so rendered, this appeal is prosecuted.

It is necessary to an understanding of the questions now presented to consider the history of Section 30 of the Act of 1869, and of its construction and application by the Supreme Court of Illinois. Section 30 was

originally a part of the Revenue Act of 1853, entitled "An Act for the Assessment of Property, and the Collection of Taxes in counties adopting township organization law." (Session Laws of Illinois, 1853, p. 3, 35.) It was taken out of the Revenue Act in 1869 and was incorporated in the Insurance Act of 1869, where it has ever since remained.

In 1869 the classes of insurance hazards authorized by law to be insured against by fire, marine and inland navigation insurance companies were limited to those named. By subsequent amendments, such companies were authorized to write lightning, windstorm, hail, automobile, explosion, sprinkler leakage, and other classes. In no subsequent amendment to the Act of 1869 was any requirement stated that net receipts arising from such additional business should be subject to any tax under Section 30 of the Act of 1869. In 1899 the Casualty Insurance Act was passed, permitting casualty companies to be organized to insure against accidental injury or death, credit losses, burglary and theft, damage to plate glass, steam boilers and automobiles, and finally to insure against "any other casualty or insurance risk specified in the article of organization, which may lawfully be the subject of insurance and the formation of corporations for insuring against which is not otherwise provided for by these statutes." Under this Act, Section 7 (Cahill's Illinois Statutes, 1931, Chapter 73, Paragraph 453) foreign casualty companies were admitted to transact business in Illinois under the conditions stated.

As to fire, marine and inland navigation insurance companies, an entirely new statute was passed in 1925, describing in detail what classes of business fire companies might transact and repealing the Act of 1885 authorizing insurance against damage by lightning, windstorms, hailstorms, tornadoes and cyclones, and the Act of 1905 as to sprinklers, pumps and fire apparatus (Cahill's 1931 Illinois Statutes, Chapter 73, Paragraph 171). The Act of 1925 was entitled "An Act providing the kinds of business which may be transacted by fire insurance companies", and applied equally to domestic and foreign companies. It included insurance against damage by fire, lightning, earthquake, windstorm, cyclone, tornado, tempest, hail, frost, snow, ice, sleet, weather, flood, rain, drought, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, explosion other than the explosion of steam boilers, farm insurance, sprinkler leakage or water leakage of any kind through pipes and containers, automobiles and all vehicles, airplanes, seaplanes, dirigibles and other aircraft, including the hazards of burglary, theft or other criminal act, general automobile and vehicle insurance, all perils of navigation, transit or transportation, marine, inland marine, transit or transportation insurance, and other casualties, excepting such as other provisions of the Act gave power to insure against. The Act of 1925 contained no requirement for payment of taxes under Section 30.

The result of this legislation and the Casualty Act taken together was to give to casualty companies, both domestic and foreign, the right to insure all kinds of

risks not covered by the Fire, Marine and Inland Navigation Insurance Act, and in effect to permit casualty companies to write every class of insurance business permitted to fire insurance companies, excepting fire, ocean marine, inland navigation and transportation risks. Thus from 1899 forward there was direct and immediate competition between casualty insurance companies in Illinois and fire, marine and inland navigation insurance companies in such important lines of insurance as automobile, hail, rain, tornado, cyclone, crop and weather insurance, explosion, sprinkler leakage, aircraft and other related lines.

The construction placed by the Supreme Court of Illinois upon Section 30 of the Act of 1869, and upon the Casualty Insurance Act is shown by the following brief outline of the prior decisions of the Supreme Court of Illinois.

In *National Fire Insurance Company* v. *Hanberg*, 215 Ill. 378, decided in 1905, the court held that net receipts meant gross receipts, less operating expenses, not including fire losses, and did not mean net profits, and that therefore foreign fire insurance companies could not deduct their losses paid by them from gross receipts in determining net receipts. At the same time, under the Revenue Act, domestic fire insurance companies were assessable as of April 1st in each year upon the net profits of their business, that is upon what they had left in money or whatever it was invested in, resulting from their gross receipts less the deduction of all operating expenses and losses.

In *Fidelity & Casualty Company* v. *Board of Review*, 264 Ill. 11, decided in 1914, the court held that

Section 30 of the Act of 1869 did not apply to the net receipts of foreign casualty insurance companies authorized to do business in Illinois, and that the tax under Section 30 did not arise under the Revenue Act, but under the Insurance Act. The court further said that the payment of taxes on net receipts was not a condition precedent to the right to do business in Illinois and that the tax on net receipts of foreign insurance companies not arising under the General Revenue Act, the authority, if any, to impose such taxes must be found in some other Act in clear and unambiguous language. As the Casualty Act did not provide for any such tax, the court held that an assessment on net receipts of a foreign casualty insurance company in Cook County, made by the Board of Review, was illegal and set it aside.

In *People* v. *Kent*, 300 Ill. 324, *People* v. *Barrett*, 309 Ill. 53, and *Hanover Fire Insurance Company* v. *Carr*, 317 Ill. 366, the court held that the tax under Section 30 was not a property tax, but was an excise, business or occupation tax, and was not subject to any of the provisions of the Revenue Act, but constituted in effect a license fee for the privilege of doing business in Illinois, in spite of the fact that the Privilege Act of 1919 provided for a fee of two per cent on gross premiums for such license. We have already referred to the reversal of the judgment in *Hanover Fire Insurance Company* v. *Carr*, 317 Ill. 366, by this Court in 272 U. S. 494, 71 L. Ed. 372.

In *Hanover Fire Insurance Company* v. *Harding*, 327 Ill. 590, upon the filing of the mandate from this

Court in the same case, the Court held that the tax under Section 30 was not an excise, business or occupation tax, but was a property tax, and that Section 30 must be read in connection with the Revenue Act of 1898, and subject to the provisions of such Act for the assessment, extension and collection of the tax, and that net receipts must be treated in every respect like other personal property.

In *People* v. *Franklin National Insurance Company*, 343 Ill. 336, the court held Section 30 to be constitutional as against the challenge that it unlawfully discriminated in favor of foreign unincorporated insurers, Lloyd's and other foreign groups who were not required to pay any taxes on competitive business with foreign fire insurance companies under Section 30.

In the case at bar, the court held, *inter alia*, that foreign fire, marine and inland navigation insurance companies were required under Section 30 to pay taxes not only upon net receipts of insurance upon fire, ocean marine and inland navigation and transportation risks, but also upon all other classes of business that they wrote, including automobile, explosion, cyclone and tornado, riot and civil commotion, etc., which they wrote in direct competition with foreign casualty insurance companies and other foreign unincorporated associations and other foreign groups of insurers, none of whom were compelled, under the foregoing decisions of the court construing Section 30, to pay any taxes upon the premiums resulting from such competitive business.

The result of the foregoing statutes and of the decisions of the Supreme Court of Illinois construing them is that

(1) Foreign fire insurance companies must return and pay taxes under Section 30 upon every class of business which they may do, even though such additional classes were not included in the Act of 1869, and although the subsequent acts authorizing the doing of such additional classes did not require payment of taxes under Section 30 as a condition of doing such additional business; while foreign casualty companies, Lloyds and other insurers pay no taxes at all upon such premiums from competitive business;

(2) Foreign fire insurance companies are not permitted to deduct their losses paid from gross receipts in determining net receipts for purposes of taxation under Section 30, while domestic fire insurance companies doing the same kinds of business are permitted to deduct their losses, being taxed only upon what property they have left at the end of each tax year after paying their operating expenses and losses;

(3) Foreign casualty insurance companies and foreign unincorporated associations, Lloyds, and other foreign groups of insurers are permitted to compete directly with foreign fire insurance companies in Illinois, upon all classes of business excepting fire, ocean marine and inland navigation insurance business, but are exempted by the decisions of the Supreme Court of Illinois from the payment of any taxes upon such competitive business under Section 30;

(4) Foreign fire insurance companies are required to pay a privilege tax of two per cent upon gross premiums annually, and are thereby

privileged to do business on the same basis as domestic companies, but the taxes assessed against them under Section 30, after such admission, are arbitrarily discriminatory in favor of all the groups of insurers above mentioned which do not pay net receipts taxes of any kind.

CASES SUSTAINING THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO ENTERTAIN THIS APPEAL.

I.

The construction and application of Section 30 of the Act of 1869, by the Supreme Court of Illinois, compelling appellant to return and be assessed upon all premiums derived from hazards of fire, ocean marine and inland navigation and transportation insurance, and in exempting domestic fire insurance companies from the payment of similar taxes upon premiums derived by them from transacting a competitive business with appellant in Illinois renders Section 30 of the Act of 1869 repugnant to the fourteenth article of amendment of the constitution of the United States in that it deprives appellant of the equal protection of the laws.

Iowa-Des Moines National Bank v. *Bennett*, 284 U. S. 239; 76 L. Ed. 265.

Quaker City Cab Company v. *Pennsylvania*, 277 U. S. 389; 72 L. Ed. 927.

Hanover Fire Insurance Company v. *Harding*, 272 U. S. 494; 71 L. Ed. 372.

Southern Railway v. *Greene*, 216 U. S. 400; 54 L. Ed. 536.

Royster Guano Company v. *Virginia*, 253 U. S. 412; 64 L. Ed. 989.

Bethlehem Motor Co. v. *Flynt*, 256 U. S. 421, 65 L. Ed. 1029.

Bell's Gap Railroad Co. v. *Pennsylvania*, 134 U. S. 232; 33 L. Ed. 892, 895.

Kansas City Southern Railway Company v. *Road Improvement District*, 256 U. S. 658; 65 L. Ed. 1151.

Airway Electric Appliance Corp. v. *Day*, 266 U. S. 71; 69 L. Ed. 169.

Louisville Gas & Electric Co. v. *Coleman*, 277 U. S. 32; 72 L. Ed. 770, 773.

Santa Clara Co. v. *Southern Pacific Ry.*, 18 Fed. Rep. 385.

II.

The construction and application of Section 30 of the Act of 1869 by the Supreme Court of Illinois, denying to appellant the right to deduct its losses from gross premiums in determining net receipts subject to taxation under Section 30, when domestic fire insurance corporations competing directly with appellant are in fact allowed to deduct their losses, renders Section 30 of the Act of 1869 repugnant to the fourteenth article of amendment to the Federal constitution in that it deprives appellant of the equal protection of the laws.

National Fire Insurance Company v. *Hauberg*, 215 Ill. 378.

Hanover Fire Insurance Company v. *Harding*, 272 U. S. 494, 71 L. Ed. 372.

Quaker City Cab Company v. *Pennsylvania*, 277 U. S. 389, 72 L. Ed. 927.

Truax v. *Corrigan*, 257 U. S. 312; 66 L. Ed. 254, 259, 260.

Southern Railway Company v. *Greene*, 216 U. S. 400; 54 L. Ed. 536.

Cotting v. *Godard*, 183 U. S. 79; 46 L. Ed. 92.

Frost v. *Corporation Commission*, 278 U. S. 515; 73 L. Ed. 483.

III.

The construction and application of Section 30 of the Act of 1869 by the Supreme Court of Illinois, exempting foreign casualty insurance corporations, Lloyds, foreign unincorporated associations, foreign mutuals, reciprocals and other associations of individuals constituting foreign insurers, from the obligations of Section 30, when by the statutes of Illinois they are permitted to compete directly with appellant on insurances of automobiles for theft, collision and public liability, in sprinkler leakage, tornado and windstorm, hail and crop damage, explosion and other hazards, and are not required to pay any taxes upon premium receipts from such competitive business under Section 30, renders Section 30 of the Act of 1869 repugnant to the fourteenth article of amendment of the constitution of the United States in that it deprives appellant of the equal protection of the laws.

Fidelity and Casualty Company v. *Board of Review*, 264 Ill. 11.

Hanover Fire Insurance Company v. *Harding*, 272 U. S. 494, 71 L. Ed. 372.

Quaker City Cab Company v. *Pennsylvania*, 277 U. S. 389, 72 L. Ed. 927.

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Airway Electric Appliance Co. v. *Day*, 266 U. S. 71, 69 L. Ed. 169.

St. Louis Cotton Compress Co. v. *Arkansas*, 260 U. S. 346, 67 L. Ed. 297.

IV.

The construction and application of Section 30 of the Supreme Court of Illinois, requiring appellant to include in its taxable net receipts premiums derived from insurance hazards outside of fire, ocean marine and inland navigation and transportation risks, and to pay taxes thereon while the foregoing foreign groups are exempt from such return and tax is violative of the rights of appellant under both the Fifth and Fourteenth Articles of Amendment of the Constitution of the United States, and deprives appellant of its property without due process of law and of the equal protection of the laws.

People of the State of Illinois v. *Concordia Fire Insurance Company*, 350 Ill. 365.

Hanover Fire Insurance Company v. *Harding*, 272 U. S. 494, 71 L. Ed. 372.

Southern Railway Company v. *Greene*, 216 U. S. 400, 54 L. Ed. 536.

Royster Guano Company v. *Virginia*, 253 U. S. 412, 64 L. Ed. 989.

Quaker City Cab Company v. *Pennsylvania*, 277 U. S. 389, 72 L. Ed. 927.

V.

The judgment of the Supreme Court of Illinois sustaining the assessment of the Board of Review of Cook County against appellant for the tax year 1927 *is violative of the rights of appellant as against both the Fifth and Fourteenth Articles of Amendment of the Constitution of the United States, and deprives appellant of its property without due process of law and is a denial of the equal protection of the laws in that:*

(1)

The Board of Review of Cook County adopted and spread, without any consideration, an estimate of net receipts of appellant for the tax year 1927 made by Herman B. Seeley, who at the time he made such estimate of net receipts had a direct contingent financial interest in the amount of taxes to be assessed against appellant and stood to profit thereby. The judgment for 1927 taxes based upon the arbitrary assessment so made violates the constitutional amendments aforesaid.

Tumey v. *Ohio*, 273 U. S. 510, 71 L. Ed. 749.

Commissioners of Union Drainage District v. *Smith*, 233 Ill. 417.

Murr v. *City of Naperville*, 210 Ill. 371.

Meyers v. *Shields*, 61 Fed. 713.

(2)

Such assessment of 1927 net receipts taxes did not debase appellant's net receipts to sixty per cent as all other property was then debased in Cook County for purposes of assessment, and thereby such assessment lacked constitutional equality and uniformity as against the Articles of Amendment aforesaid.

Raymond v. *Chicago Union Traction Company*, 207 U. S. 20, 52 L. Ed. 78.

Horn Silver Mining Company v. *New York*, 143 U. S. 305, 36 L. Ed. 164.

Sioux City Bridge Co. v. *Dakota County*, 257 U. S. 652, 66 L. Ed. 417.

Greene v. *Louisville Ry. Co.*, 244 U. S. 499, 61 L. Ed. 1280.

General American Tank Car Co. v. *Day*, 270 U. S. 367, 70 L. Ed. 635.

Chicago Great Western Ry. Co. v. *Kendall*, 266 U. S. 94, 69 L. Ed. 183, 188, 189.

Cumberland Coal Co. v. *Board*, 284 U. S. 23, 76 L. Ed. 146.

Conclusion.

The foregoing statement is respectfully submitted in support of the jurisdiction of the Supreme Court of the United States to review upon appeal the judgment of the Supreme Court of Illinois, heretofore rendered in the above entitled cause.

FREDERICK D. SILBER,
Counsel for Concordia Fire Insurance Company, a Corporation.

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